

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 9, 2007

D051327 In re Ruiz on Habeas Corpus

The petition is denied.

D051708 Naumann et al. v. Superior Court of San Diego County/Onyegbule et al.

The petition is denied.

D051736 Maria R. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency.

The matter has been reviewed by Associate Justices Benke, Huffman & Irion. The notice of intent filed on September 28, 2007 is untimely. The case is dismissed.

D048678 People v. Bass

The petition for rehearing is denied.

D048975 People v. Armitage

The sentence is reversed and case remanded to the trial court for resentencing in accordance with the views expressed in this opinion. Huffman, Acting P.J.; We Concur: Nares, J., Aaron, J.

D051334 In re Arias on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Huffman, Haller and Irion. We take judicial notice of petitioner's direct appeal No. D039491, and habeas petition considered with the appeal No. D042853, and second habeas petition No. D051017.

Petitioner's challenge to restitution could have been raised on direct appeal, or in the two prior habeas petitions before this court. Petitioner was aware of the restitution order at sentencing and has provided no justification for the delay or for failing to raise his claim in prior proceedings. The petition is therefore procedurally barred because it is untimely and successive, and petitioner has not established an exception to the procedural bar. (*In re Robbins* (1998) 18 Cal.4th 770, 814, fn. 34; *In re Clark* (1993) 5 Cal.4th 750, 797-798; *In re Bower* (1985) 38 Cal.3d 865, 873, fn. 3.)

The petition is denied.

D051764 In re Young on Habeas Corpus

The petition and request for appointment of counsel are denied without prejudice to refiling in the Court of Appeal, Fifth Appellate District, 2424 Ventura St., Fresno, CA 93721. The clerk is directed to retain one copy of the petition, request for appointment of counsel, and exhibits for our records and to return the originals and all other copies to Young so he may file them in the appropriate court.

D049396 Whaley v. State of California Employment Development Department

The request for publication is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 9, 2007 (Continued)

D051497 Harry D. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Harry D. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

D051492 Elvira V. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Elvira V. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case as to Elvira V. is DISMISSED.

D051495 Gloria O. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Jose C. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case as to Jose C. is DISMISSED. Response to the petition for extraordinary writ filed by petitioner Gloria O. on October 1, 2007, is due on or before 10 days from the date of this order

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

Clerk: D. Moore

D047796 Sycamore Ridge Apartments, LLC v. Naumann et al./LaFave et al.

Cause called on merits. Kenneth C. Feldman, Esq. argued for appellant/cross-respondent, Naumann. David A. Kay, Esq. argued for respondent/cross-appellant, Sycamore Ridge Apartments. Mr. Feldman replied. Robert F. Semmer, Esq. argued for respondent, LaFave. Mr. Kay replied. Cause submitted.

Court recessed at 9:55 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

Clerk: D. Moore

D047969 Oranen v. Bruckman

Cause called on merits. Gregory M. Garrison, Esq. argued for appellant. Alan Keith Williams, Esq. argued for respondent. Mr. Garrison replied. Cause submitted.

Court recessed at 2:06 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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October 9, 2007 (Continued)

D050379 People v. Lagrimas

Cause called on merits. Charles Theodore Mathews, Esq. argued for appellant. Daniel Silva, Certified Law Student, argued for respondent. Mr. Mathews replied. Cause submitted.

D050421 People v. Graddy

Cause called on merits. Patricia J. Ulibarri, Esq. argued for appellant. Randall Einhorn, Deputy Attorney General argued for respondent. Ms. Ulibarri replied. Cause submitted.

Court recessed at 2:41 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion

D046839 Brown v. Brown

Cause called on merits. Philip H. Stillman, Esq. argued for appellant. Edward I. Silverman, Esq. argued for respondent. Mr. Stillman replied. Cause submitted.

Court recessed at 3:17 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller

D049710 Parkerson v. Carpenter

Cause called on merits. Anthony D. Zinnanti, Esq. argued for appellant. Stephen Temko, Esq. argued for respondent. Mr. Zinnanti replied. Cause submitted.

Court recessed at 3:26 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D048830 Schutte & Koerting Inc., et al. v. Regional Water Quality Control Board

Cause called on merits. William David Wick, Esq. argued for appellant. Carol Squire, Deputy Attorney General argued for respondent, Regional Water Quality Control Board. David H. Robinson, Deputy Attorney General argued for respondent. Mr. Wick replied. Cause submitted.

Court recessed at 4:15 p.m. until Wednesday, October 10, 2007 at 1:30 p.m.

D051459 Deshan A. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner David H. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed. The case as to David H. is DISMISSED.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 10, 2007

D047683 People v. Quiroz

The judgment of the trial court is affirmed. Certified for partial publication. Aaron, J.;
We Concur: Huffman, Acting P.J., Nares, J.

D050874 In re Alexis L. et al., Juveniles

The appeal is dismissed. Benke, J.; We Concur: McConnell, P.J., Nares, J.

D048346 Quang v. Tran et al.

The judgment is affirmed. Costs on appeal are awarded to respondent Quang. Huffman, Acting
P.J.; We Concur: Nares, J., Aaron, J.

D048392 People v. Garcia

The judgment is reversed as to the sentence and the matter is remanded for resentencing. In all
other aspects, the judgment is affirmed. McIntyre, Acting P.J.; We Concur: Aaron, J., Irion, J.

D051059 People v. Thompson

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, J., Aaron, J.

D050661 People v. Ferraz

The judgment is affirmed. McConnell, PJ; We Concur: Aaron, J., Irion, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable
Associate Justices Judith Haller and Terry O'Rourke
Clerk: D. Moore

D050393 People v. Gibson

Cause called on merits. Andrew E. Rubin, Esq. argued for appellant. The court granted Mr.
Rubin five days to respond to citations submitted by the Attorney General. Sabrina Lane-Erwin,
Deputy Attorney General argued for respondent. Mr. Rubin replied. Cause submitted.

D048786 Heaton v. Perron

Cause called on merits. Robert J. Francavilla, Esq. argued for appellant. Bradley R. Blamires,
Esq. argued for respondent. Mr. Francavilla replied. Cause submitted.

Court recessed at 9:37 a.m. to change panel members. New panel members: The Honorable
Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman
and Judith Haller

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 10, 2007 (Continued)

D048986 Sharp Healthcare et al. v. County of San Diego

Cause called on merits. William A. Johnson, Jr., Deputy County Counsel argued for appellant. Mark A. Johnson, Esq. argued for respondent. Mr. William Johnson replied. Cause submitted.

Court recessed at 10:33 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D049539 Tewksbury v. County of San Diego

Cause called on merits. Stephen J. Estey, Esq. argued for appellant. George W. Brewster Jr., Deputy Counsel argued for respondent. Mr. Estey replied. Cause submitted.

D047612 Reynoso v. Eye Surgery Center of Southern California/Lo et al.

Cause called on merits. Penelope Phillips, Esq. argued for appellant. Gabriele Prater, Esq. argued for respondent, Eye Surgery Center of Southern California. Lisa Cooney, Esq. argued for respondent, Lo. Ms. Phillips replied. Cause submitted.

Court recessed at 11:25 a.m. 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron
Clerk: D. Moore

D049937 Guerrero et al. v. City of San Diego

Cause called on merits. Terrence Leroy Butler, Esq. argued for appellant. William S. Donnell, Deputy City Attorney argued for respondent. Mr. Butler replied. Cause submitted.

Court recessed at 2:08 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

D050397 People v. SOSA

Cause called on merits. Gerald J. Miller, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 2:15 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 10, 2007 (Continued)

D049988 Reliant Energy, Inc. v. City of Los Angeles et al.

D049989 Centerpoint Energy, Inc. v. City of San Francisco et al.

Reliant appeal: Matter called on merits. Geoffrey Thomas Holtz, Esq. argued for petitioner, Reliant Energy, Inc. Joseph Cotchett, Esq. argued for real party in interest, City of Los Angeles, and etc. Mr. Holtz replied. Centerpoint appeal: Rex S. Heinke, Esq. argued for petitioner, Centerpoint. Joseph Cotchett, Esq. argued for real party in interest, City of San Francisco, and etc. Mr. Heinke replied. Matter submitted.

Court recessed at 3:55 p.m. until Thursday, October 11, 2007 at 9:00 a.m.

D051210 Abney v. Superior Court of San Diego County/The People

The petition is denied.

D051257 In re Soto on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 11, 2007

D051739 People v. Denbo

The notice of appeal filed on September 20, 2007, seeks review of the July 31, 2007, decision of the Appellate Division of the San Diego Superior Court. Review of a decision of the Appellate Division is only by certification and transfer. (Cal. Rules of Court, rules 8.1000, 8.1002, 8.1005 and 8.1009.) The matter was not certified by the Appellate division and the Court of Appeal did not order transfer. The appeal is DISMISSED.

D049856 People v. Harlan

The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Benke, J.

D050646 In re Shyanne W., a Juvenile

The judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., O'Rourke, J.

D050912 People v. Nava

Upon filing an abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

D051690 Lua v. Superior Court of San Diego County/Salzetti

The petition is denied.

D051666 Perkins v. Wilson

Because appellant did not timely pay the filing fee, the appeal is dismissed. (Cal. Rules of Court, rule 8.100(c)(5).)

D051515 Melendez v. Superior Court of San Diego County/People

The petition is denied.

D056176 XYBERNET, Inc. v. Workers' Compensation Appeals Board and Hughes

At the request of the petitioners, the petition for writ of review is dismissed.

D051765 Garden Communities v. Superior Court of San Diego County/Bristman

The petition is denied.

D049566 People v. Ceja

The petition for rehearing is denied. Justices Benke and Huffman concur in the denial; Justice McDonald would grant.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 11, 2007 (Continued)

D050392 People v. Pierce et al.

Cause called on merits. Barbara A. Smith, Esq. argued for appellant, Pierce. Karl Terp, Deputy Attorney General argued for respondent. Cause submitted.

D049371 Courtney v. San Diego National Bank

Cause called on merits. Jonathan R. Zeko, Esq. argued for appellant. William T. Pascoe, Esq. argued for respondent. Cause submitted.

D049974 Wedbush Morgan Securities, Inc. v. Wilson

Cause called on merits. Gary Lee Holmes, Esq. argued for appellant. Alexander George VanBroek, Esq. argued for respondent. Mr. Holmes replied. Cause submitted.

Court recessed at 10:00 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron

D048799 Robert J. v. Catherine D. et al.

Cause called on merits. Mark Gloven, Esq. argued for appellant. Stephen Temko, Esq. was present in oral argument with Mr. Gloven, but did not argue. Cause submitted.

Court recessed at 10:22 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. Moore

D049039 People v. Mosby

Cause called on merits. Theresa O. Stevenson, Esq. argued for appellant. Suzanne Nicholls, Certified Law Student argued for respondent. Ms. Stevenson replied. Cause submitted.

D048907 People v. Williams

Cause called on merits. Pamela G. Lacher, Esq. argued for appellant. Scott Taylor, Deputy Attorney General argued for respondent. Ms. Lacher replied. Cause submitted.

D049737 Millard v. Biosources, Inc.

Cause called on merits. Jeffrey Winter, Esq. argued for appellant. Jason William Wansor, Esq. argued for respondent. Mr. Winter replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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Court recessed at 2:11 p.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion

D049160 MacDonald v. MacDonald

Cause called on merits. John S. MacDonald, argued for appellant, in pro per. Dale Henderson, Esq. argued for respondent. Mr. MacDonald replied. Cause submitted.

D048974 De Villers, et al. v. County of San Diego

Cause called on merits. Deborah A. McCarthy, Deputy County Counsel argued for appellant. Candace M. Carroll, Esq. argued for respondent. Ms. McCarthy replied. Cause submitted.

D049869 Hughes v. Frontrange Solutions USA Inc., et al.

Cause called on merits. John H. Donboli, Esq. argued for appellant. Steven G. Amundson, Esq. argued for respondent. Mr. Donboli replied. Cause submitted.

Court recessed at 3:25 p.m. until Friday, October 12, 2007 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 12, 2007

D049331 Brinker Restaurant Corporation et al. v. Superior Court of San Diego County/Hohnbaum et al.

Let a peremptory writ of mandate issue directing the superior court to vacate its July 6, 2006 class certification order, enter a new order denying with prejudice certification of the proposed rest break subclass, and denying without prejudice certification of the proposed meal period and off the clock subclasses. The matter is remanded with directions that the court examine and consider the elements of plaintiffs' meal period and off the clock claims, including the issue of whether Brinker had a duty under section 512(a) and IWC Wage Order No. 5 to ensure that its hourly employees actually took the meal periods it provided to them.

The stay issued on December 7, 2006, is vacated. Brinker is entitled to its own costs in this writ proceeding. This opinion is made final immediately as to this court. (Cal. Rules of Court, rule 8.264(b)(3).) Nares, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D050869 In re Jason J. et al., Juveniles

The judgments and orders are affirmed. Aaron, J.; We Concur: McConnell, P.J., O'Rourke, J.

D049880 In re Levi A. et al., Juveniles

The appeal is dismissed as moot. Haller, J.; We Concur: Huffman, Acting P.J., Irion, J.

D049819 People v. Calac

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., McDonald, J.

D049305 People v. Gundelfinger

The judgment is affirmed. Huffman Acting P.J.; We Concur: Benke, J., Aaron, J.

D040565 Annen v. D'Souza et al.

The judgment is affirmed. Aaron, J.; We Concur: Huffman, Acting P.J., Haller, J.

D050374 In re Lealand D., a Juvenile

The order is affirmed. Irion, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D050332 People v. Bickham

The judgment is affirmed. Haller, J.; We Concur: McConnell, P.J., Irion, J.

D050447 Wood v. Emmerson et al.

The judgment is reversed and the trial court is directed to enter a judgment in favor of the defendants. Appellants to recover costs on appeal. CERTIFIED FOR PUBLICATION
Benke, Acting P.J.; We Concur: Huffman, J., McDonald, J.

D050698 In re Ryan F., a Juvenile

The judgment is affirmed. McConnell, P.J.; We Concur: McIntyre, J., Aaron, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 12, 2007 (Continued)

D051199 In re Welch on Habeas Corpus

The motion for reconsideration dated September 25, 2007, has been read and considered by Justices Huffman, Haller, and Irion. The denial of a petition for a writ within the appellate court's original jurisdiction without issuance of an alternative writ or order to show cause is final immediately. (Cal. Rules of Court, rule 8.264(b)(2)(A).) Eugene Welch's petition for a writ of habeas corpus was summarily denied on September 20, 2007. This court has no jurisdiction to reconsider the matter. The motion is denied.

D051335 Lubitz v. O'Laughlin

Pursuant to California Rules of Court, rule 8.140, the appeal filed July 23, 2007, is dismissed for appellant's failure to timely designate the record (Cal. Rules of Court, rules 8.120(a), 8.130(a)).

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion

Clerk: D. Moore

D048364 People v. Saddler

Cause called on merits. Dacia Burz, Esq. argued for appellant. Stephanie Chow, Deputy Attorney General argued for respondent. Ms. Burz replied. Cause submitted.

D050645 In re Chloe T., a Minor

Cause called on merits. William D. Caldwell, Esq. argued for appellant. Linda Fabian, Esq. argued for the minor. Janis K. Stocks, Esq. argued for respondent. Mr. Caldwell replied. Cause to be submitted at a later date.

Court recessed at 10:03 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion

D049080 Zucchet et al. v. City of San Diego

Cause called on merits. Joe B. Cordileone, Deputy City Attorney argued for appellant. Earl M. Pott, Esq. argued for respondent. Mr. Cordileone replied. Cause submitted.

Court recessed at 10:47 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 12, 2007 (Continued)

D049243 Eichenberg v. San Diego Medical Services Enterprise, LLC

Cause called on merits. Sean David Cowdrey, Esq. argued for appellant. Robert W. Frank, Jr., Esq. argued for respondent. Mr. Cowdrey replied. Cause submitted.

Court recessed at 11:37 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

Clerk: D. Moore

D049452 Hogar Dulce Hogar v. Community Development Commission of the City of Escondido

Cause called on merits. Michael M. Hogan, Esq. argued for appellant/cross-respondent. Catherine A. Rodman, Esq. argued for respondent/cross-appellant. Jacob M. Slania, Esq. was present in oral argument for respondent/cross-appellant, but did not argue. Mr. Hogan replied. Cause submitted.

D047141 Freestyle Martial Arts Corporation v. SOCO, LLC et al.

Cause called on merits. Sara A. McClintock, Esq. argued for appellant, America West Properties. Wendy S. Albers, Esq. argued for appellant, Soco, LLC. Edward I. Silverman, Esq. argued for respondent. Ms. McClintock replied. Ms. Albers replied. Cause submitted.

Court recessed at 2:31 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre

D049426 Cooley et al. v. Miller

Cause called on merits. Matt Holder, Esq. argued for appellant. Terry R. Dowdall, Esq. argued for respondent. Cause submitted.

D049874 Zaya v. Chaker

Cause called on merits. No appearance by Ms. Zaya. Darren D. Chaker, Esq. argued for appellant, in pro per. Cause submitted.

Court recessed at 3:13 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
October 12, 2007 (Continued)

D048378 Deitrick, et al. v. National RV, Inc.

Cause called on merits. Jonathan C. Corn, Esq. argued for appellant. Douglas D. Law, Esq. argued for respondent. Mr. Corn replied. Cause submitted.

Court adjourned at 3:47 p.m.

D051345 In re Benn on Habeas Corpus

The petition is denied.

D051804 Alvarado et al. v. Superior Court of San Diego County/Aiko Party Inc., et al.

The petition is denied.

D051707 Gong v. RFG Oil Inc., et al.

The petition is granted. The matter will proceed by way of appeal under the same case number as this petition.